

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LARRY DALE JOHNSON,)
Petitioner,) Case No. 3:11-CV-515-ST
v.)
WARDEN J.E. THOMAS,) ORDER
Respondent.)

)

STEWART, Magistrate Judge.

This 28 U.S.C. § 2241 habeas corpus action comes before the court on petitioner's Motion for Summary Judgment (docket #20) and his Proposed Amended Petition for Writ of Habeas Corpus (docket #21). The Motion for Summary Judgment is not accompanied by a certificate of service, and the Government has not responded to it in any way. The court is therefore left to conclude that

petitioner failed to serve a copy of his Motion on counsel for respondent as required by Fed. R. Civ. P. 5(a).¹

With respect to petitioner's Proposed Amended Petition, a party may amend its pleading once as a matter of course: (1) within 21 days of service of the pleading to be amended; or (2) within 21 days after service of a responsive pleading or a motion to dismiss, whichever is earlier. Fed. R. Civ. P. 15(a)(1). If a plaintiff's proposed amendment does not fall within either of these two categories, he may only amend his pleading with the consent of the opposing party or with leave of the court.

Because petitioner's Proposed Amended Complaint does not fall within either of the two categories contemplated by Fed. R. Civ. P. 15(a)(1), he is required to file a formal motion to amend and provide a copy to opposing counsel. As he has not done so, the Clerk of Court is directed to strike the Proposed Amended Petition.

CONCLUSION

Petitioner's Motion for Summary Judgment (docket #20) is DENIED for lack of service.

The Clerk of Court is DIRECTED TO STRIKE petitioner's Proposed Amended Complaint (docket #21). This case is fully briefed and the Clerk shall set an under advisement date of December 29, 2011. No

¹ Petitioner has already filed his supporting memorandum as contemplated by the court's Scheduling Order (docket #9). A summary judgment motion is unnecessary and would not have any impact on the resolution of this case.

further briefing shall be accepted absent further order of the court.

IT IS SO ORDERED.

DATED this 5th day of January, 2012.



Janice M. Stewart
United States Magistrate Judge